

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CAROLYN L. CARTER and DEPARTMENT OF THE ARMY,  
AMMUNITION PLANT, McAlester, Okla.

*Docket No. 97-1808; Submitted on the Record;  
Issued May 3, 1999*

---

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied compensation on the grounds that appellant's claim was not timely filed.

On October 20, 1994 appellant, then a 47-year-old explosives worker, filed a notice of traumatic injury and claim for compensation, alleging that on May 4, 1991 her left knee gave out, causing her to fall backward and trip over three five-gallon containers of paint. Appellant contends that she sustained disc and nerve damage to the lower part of her back and left hip joint as a result of the injury. She submitted medical evidence in support of her claim, but none of the evidence referred to the May 4, 1991 injury. She noted on the CA-1 form that she had a previous injury to her left calf on March 6, 1991 and an arthroscopy to the left knee on December 2, 1991. Appellant's supervisor advised that he had no knowledge of the claimed accident as he was not a supervisor in the area in question at the time of the claimed injury. He also noted that all supervisors who would have knowledge of any such incident had retired.

By letter dated March 2, 1995, the Office requested additional information as to why appellant had not timely filed her claim within the requisite three years from the date of the alleged injury.

In a March 30, 1995 decision, the Office denied compensation on the grounds that the claim was not timely filed.<sup>1</sup>

By letter dated April 3, 1995, appellant requested reconsideration. Although, she submitted additional evidence, none of the evidence mentioned a May 4, 1991 injury.<sup>2</sup>

---

<sup>1</sup> The Office noted the date of injury as June 4, 1991 and not May 4, 1991 as alleged on the (CA-1) claim form.

<sup>2</sup> For example, June 3 and July 10, 1991 employing establishment medical treatment notes did not mention any employment injury sustained on or about May 4, 1991.

The Office denied modification in a merit decision dated April 5, 1995.

In a letter dated May 15, 1995, appellant again requested reconsideration, but she did not submit any new evidence.

In a decision dated June 16, 1995, the Office denied appellant's request for merit review.

By letter dated July 16, 1995, appellant filed her third request for reconsideration. Along with her letter, appellant submitted an April 13, 1992 memorandum and a July 19, 1995 medical report, neither of which pertained to the alleged May 4, 1991 work injury.

In a merit decision dated October 19, 1995, the Office denied modification.

On May 9, 1996, counsel for appellant requested reconsideration of the Office's October 19, 1995 decision, noting that appellant's injury occurred on March 16, 1992 rather than May 4, 1991.<sup>3</sup>

Along with the reconsideration request, appellant's counsel submitted a May 6, 1996 affidavit signed by Mr. Harold E. Washington, former safety and occupational health specialist at the employing establishment, which indicated that on March 16, 1992, appellant was working when her leg gave way causing her to fall backward over three containers of paint. Mr. Washington noted, however, that he was not present to witness the injury and that there was no documentation to support that the incident occurred.

In an undated affidavit, Juanita Griffin, a fellow employee, stated that she witnessed appellant on March 16, 1992 fall backward over three five-gallon containers of paint.

In a February 12, 1996 report, Dr. Ralph W. Richter, a neurologist, noted appellant's allegation that on March 16, 1992 she fell backwards hitting the buttocks and lower part of her back against some paint cans and the concrete floor.

In a merit decision dated August 13, 1996, the Office denied modification on the grounds that the new evidence failed to establish that appellant's claim was timely filed.

On December 18, 1996 counsel for appellant filed another request for reconsideration. On behalf of appellant, he submitted a portions of an October 17, 1994 hearing transcript which pertained to a work-related leg injury in March 1991 (case file 160188861). Page three of the hearing transcript indicates that appellant received compensation for the March 1991 injury until April 3, 1994, when benefits were terminated. On page twelve of the hearing transcript, appellant described that she fell over three gallons of paint because her left leg gave out. She testified that her supervisor and 18 to 20 workers witnessed the fall. No specific date was given for the fall. On pages 36 through 38 of the transcript, the Office hearing representative suggested that appellant would have to file a separate claim for "the injury where you fell over the paint cans" in May 1991 as described at the hearing.

---

<sup>3</sup> The record before the Board pertains to the claim for the claimed May 4, 1991 work injury and does not pertain to any other accepted or claimed injuries.

Appellant's counsel also submitted medical records dating from December through June 1991 and various medical reports from Dr. Randall Hendricks, an employing establishment physician, dating from June 21, 1991 through to April 15, 1992. The medical records and Dr. Hendricks reports pertain to a March 12, 1991 work injury. There is no mention of a work injury on May 4, 1991.

In a decision dated January 31, 1997, the Office denied modification following a merit review of the case.

In a letter dated February 8, 1997, appellant requested another reconsideration. She alleged that her rights had been violated because she was terminated for having an on-the-job injury. She reiterated that she sustained injuries on March 6, 1991 and March 16, 1992.

Along with her February 8, 1997 letter, appellant submitted a worker's compensation court form pertaining to a March 6, 1991 injury, and a November 21, 1991 note from Dr. Hendricks which opined that appellant was unable to work due to her leg injury but did not include the date of the injury. Appellant also submitted duplicate copies of medical records and other documents that were already of record.

In a decision dated February 12, 1997, the Office performed a merit review of the evidence and found it insufficient to warrant modification of the prior decision.

The Board finds that the Office properly denied compensation on the grounds that appellant's claim was not timely filed.

Section 8122(a) of the Federal Employees' Compensation Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>4</sup> In cases involving a traumatic injury, the time limitation begins to run at the time of the incident even though the employee may not have been aware of the precise nature of the injury and its ultimate consequences.<sup>5</sup> The statute provides an exception, which states that a claim may be regarded timely if an immediate superior had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate supervisor reasonably on notice of an on-the-job injury or death.<sup>6</sup>

In the instant case, appellant's claim was not filed within three years of the alleged May 4, 1991 injury. Although appellant has, at different times, alleged either that she informed her supervisor of her injury or that the supervisory witnessed the incident, there is no documentation in the record to support appellant's allegations. The affidavit from Mr. Washington acknowledged that there is no paperwork to corroborate appellant's description of the employment incident and Mr. Washington conceded that he was not present on May 4, 1991

---

<sup>4</sup> 5 U.S.C. § 8122(a). As appellant claimed a traumatic injury, and did not claim latent disability, section 8122(b) is not applicable.

<sup>5</sup> *Gary W. Hudiburgh, Jr.*, 37 ECAB 423 (1986); *Ray C. Spell*, 31 ECAB 719 (1980).

<sup>6</sup> 5 U.S.C. § 8122(a)(1); see *Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

to witness appellant's claimed injury. The contemporaneous medical evidence for the year 1991 from the employing establishment's health unit only describes a work-related leg injury on March 6, 1991 and not a May 4, 1991 back injury. Appellant also submitted no witness statements corroborating that her immediate supervisor had actual notice within 30 days. Thus, appellant's statements, standing alone, are insufficient to establish that her supervisor was placed on notice of the May 4, 1991 injury.<sup>7</sup>

Despite having alleged May 4, 1991 as the date of injury in her CA-1 form, in a May 9, 1996 request for reconsideration, appellant's counsel suggested that appellant's injury actually occurred on March 16, 1992 and not May 4, 1991. Appellant, however, has offered no explanation for changing the date of injury, and in any event, the claim before the Board pertains to whether appellant sustained an injury on May 4, 1991 as alleged on the (CA-1) claim form.<sup>8</sup>

The decisions of the Office of Workers' Compensation Programs dated February 12 and January 31, 1997, and August 13, 1996 are affirmed.

Dated, Washington, D.C.  
May 3, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

---

<sup>7</sup> See *Jose Salaz*, 41 ECAB 743 (1990).

<sup>8</sup> This decision does not preclude appellant from pursuing other claims she may have filed for different injuries on different dates.